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CHARLES ELMORE CRO
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1948

No. 699

JOSEPHINE G. BRAUN,

Petitioner,

against

MORRIS W. TAUB and MARIE A. TAUB,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF
CERTIORARI TO THE COURT OF APPEALS
FOR THE SECOND CIRCUIT

JOSEPH M. SCHWARTZ,
Attorney for Respondents,
291 Broadway,
New York, N. Y.

Supreme Court of the United States

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Petitioner made a contract to sell a house to respondent. When the parties met to close as was provided in said contract petitioner changed her mind and deliberately refused to convey. An action was commenced in the Supreme Court of the State of New York to compel her to perform. A judgment was entered in that action against her and under that judgment a deed of conveyance of the property in question was made and delivered to respondents who thereby became the owners in fee simple of the premises (fols. 17-23).

After all that she brought an action in the United States District Court asking that she be adjudged the owner and be given possession and for \$600 damages. Upon the plea that the aforesaid judgment was determinative of the rights of the parties, the District Court dismissed the action and its judgment was affirmed.

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POINT ONE

The judgment of the State Court was a final determination of the controversy between the parties by a court of competent jurisdiction.

That the Supreme Court of the State of New York had jurisdiction; that the judgment involved the merits of the action and that it was final are so elementary and clear that the writer feels that it would be an imposition to set forth argument and cite authority to support it.

POINT TWO

The judgment was therefore *res adjudicata* and the correctness of its holding cannot be questioned.

The petitioner's argument, in the main, is an attack upon the result in the prior action; she feels that she should have won. However, the law forbids a retrial of the issues in a subsequent action. Right or wrong, the determination is binding. *New York State Labor Relations Board v. Holland Laundry*, 294 N. Y. 480, 493-494.

CONCLUSION

The petition should be denied.

Respectfully submitted,

JOSEPH M. SCHWARTZ,
Attorney for Respondents.

